

§ 39.18

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the activities of a clearing member due to a violation by the clearing member of any rule of the derivatives clearing organization; and

(3) Report to the Commission regarding rule enforcement activities and sanctions imposed against clearing members as provided in paragraph (a)(2) of this section, in accordance with § 39.19(c)(4)(xi) of this part.

(b) *Authority to enforce rules.* The board of directors of the derivatives clearing organization may delegate responsibility for compliance with the requirements of paragraph (a) of this section to the risk management committee, unless the responsibilities are otherwise required to be carried out by the chief compliance officer pursuant to the Act or this part.

§ 39.18 System safeguards.

(a) *Definitions.* For purposes of this section:

Recovery time objective means the time period within which an entity should be able to achieve recovery and resumption of clearing and settlement of existing and new products, after those capabilities become temporarily inoperable for any reason up to or including a wide-scale disruption.

Relevant area means the metropolitan or other geographic area within which a derivatives clearing organization has physical infrastructure or personnel necessary for it to conduct activities necessary to the clearing and settlement of existing and new products. The term “relevant area” also includes communities economically integrated with, adjacent to, or within normal commuting distance of that metropolitan or other geographic area.

Wide-scale disruption means an event that causes a severe disruption or destruction of transportation, telecommunications, power, water, or other critical infrastructure components in a relevant area, or an event that results in an evacuation or unavailability of the population in a relevant area.

(b) *General—(1) Program of risk analysis.* Each derivatives clearing organization shall establish and maintain a program of risk analysis and oversight with respect to its operations and automated systems to identify and mini-

mize sources of operational risk through:

(i) The development of appropriate controls and procedures; and

(ii) The development of automated systems that are reliable, secure, and have adequate scalable capacity.

(2) *Resources.* Each derivatives clearing organization shall establish and maintain resources that allow for the fulfillment of each obligation and responsibility of the derivatives clearing organization in light of the risks identified pursuant to paragraph (b)(1) of this section.

(3) *Verification of adequacy.* Each derivatives clearing organization shall periodically verify that resources described in paragraph (b)(2) of this section are adequate to ensure daily processing, clearing, and settlement.

(c) *Elements of program.* A derivatives clearing organization’s program of risk analysis and oversight with respect to its operations and automated systems, as described in paragraph (b) of this section, shall address each of the following categories of risk analysis and oversight:

(1) Information security;

(2) Business continuity and disaster recovery planning and resources;

(3) Capacity and performance planning;

(4) Systems operations;

(5) Systems development and quality assurance; and

(6) Physical security and environmental controls.

(d) *Standards for program.* In addressing the categories of risk analysis and oversight required under paragraph (c) of this section, a derivatives clearing organization shall follow generally accepted standards and industry best practices with respect to the development, operation, reliability, security, and capacity of automated systems.

(e) *Business continuity and disaster recovery—(1) Plan and resources.* A derivatives clearing organization shall maintain a business continuity and disaster recovery plan, emergency procedures, and physical, technological, and personnel resources sufficient to enable the timely recovery and resumption of operations and the fulfillment of each

obligation and responsibility of the derivatives clearing organization following any disruption of its operations.

(2) *Responsibilities and obligations.* The responsibilities and obligations described in paragraph (e)(1) of this section shall include, without limitation, daily processing, clearing, and settlement of transactions cleared.

(3) *Recovery time objective.* The derivatives clearing organization's business continuity and disaster recovery plan described in paragraph (e)(1) of this section, shall have the objective of, and the physical, technological, and personnel resources described therein shall be sufficient to, enable the derivatives clearing organization to resume daily processing, clearing, and settlement no later than the next business day following the disruption.

(f) *Location of resources; outsourcing.* A derivatives clearing organization may maintain the resources required under paragraph (e)(1) of this section either:

(1) Using its own employees as personnel, and property that it owns, licenses, or leases (own resources); or

(2) Through written contractual arrangements with another derivatives clearing organization or other service provider (outsourcing).

(i) *Retention of responsibility.* A derivatives clearing organization that enters into such a contractual arrangement shall retain complete liability for any failure to meet the responsibilities specified in paragraph (e) of this section, although it is free to seek indemnification from the service provider. The outsourcing derivatives clearing organization must employ personnel with the expertise necessary to enable it to supervise the service provider's delivery of the services.

(ii) *Testing.* The testing referred to in paragraph (j) of this section shall include all of the derivatives clearing organization's own and outsourced resources, and shall verify that all such resources will work effectively together.

(g) *Notice of exceptional events.* A derivatives clearing organization shall notify staff of the Division of Clearing and Risk promptly of:

(1) Any hardware or software malfunction, cyber security incident, or targeted threat that materially im-

pairs, or creates a significant likelihood of material impairment, of automated system operation, reliability, security, or capacity; or

(2) Any activation of the derivatives clearing organization's business continuity and disaster recovery plan.

(h) *Notice of planned changes.* A derivatives clearing organization shall give staff of the Division of Clearing and Risk timely advance notice of all:

(1) Planned changes to automated systems that are likely to have a significant impact on the reliability, security, or adequate scalable capacity of such systems; and

(2) Planned changes to the derivatives clearing organization's program of risk analysis and oversight.

(i) *Recordkeeping.* A derivatives clearing organization shall maintain, and provide to Commission staff promptly upon request, pursuant to § 1.31 of this chapter, current copies of its business continuity plan and other emergency procedures, its assessments of its operational risks, and records of testing protocols and results, and shall provide any other documents requested by Commission staff for the purpose of maintaining a current profile of the derivatives clearing organization's automated systems.

(j) *Testing—(1) Purpose of testing.* A derivatives clearing organization shall conduct regular, periodic, and objective testing and review of:

(i) Its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity; and

(ii) Its business continuity and disaster recovery capabilities, using testing protocols adequate to ensure that the derivatives clearing organization's backup resources are sufficient to meet the requirements of paragraph (e) of this section.

(2) *Conduct of testing.* Testing shall be conducted by qualified, independent professionals. Such qualified, independent professionals may be independent contractors or employees of the derivatives clearing organization, but shall not be persons responsible for development or operation of the systems or capabilities being tested.

(3) *Reporting and review.* Reports setting forth the protocols for, and results of, such tests shall be communicated

to, and reviewed by, senior management of the derivatives clearing organization. Protocols of tests which result in few or no exceptions shall be subject to more searching review.

(k) *Coordination of business continuity and disaster recovery plans.* A derivatives clearing organization shall, to the extent practicable:

(1) Coordinate its business continuity and disaster recovery plan with those of its clearing members, in a manner adequate to enable effective resumption of daily processing, clearing, and settlement following a disruption;

(2) Initiate and coordinate periodic, synchronized testing of its business continuity and disaster recovery plan and the plans of its clearing members; and

(3) Ensure that its business continuity and disaster recovery plan takes into account the plans of its providers of essential services, including telecommunications, power, and water.

§ 39.19 Reporting.

(a) *General.* Each derivatives clearing organization shall provide to the Commission the information specified in this section and any other information that the Commission deems necessary to conduct its oversight of a derivatives clearing organization.

(b) *Submission of reports.* (1) Unless otherwise specified by the Commission or its designee, each derivatives clearing organization shall submit the information required by this section to the Commission electronically and in a format and manner specified by the Commission.

(2) *Time zones.* Unless otherwise specified by the Commission or its designee, any stated time in this section is Central time for information concerning derivatives clearing organizations located in that time zone, and Eastern time for information concerning all other derivatives clearing organizations.

(3) Unless otherwise specified by the Commission or its designee, *business day* means the intraday period of time starting at the business hour of 8:15 a.m. and ending at the business hour of 4:45 p.m., on all days except Saturdays, Sundays, and Federal holidays.

(c) *Reporting requirements.* Each registered derivatives clearing organization shall provide to the Commission or other person as may be required or permitted by this paragraph the information specified below:

(1) *Daily reporting.* (i) A report containing the information specified by this paragraph (c)(1), which shall be compiled as of the end of each trading day and shall be submitted to the Commission by 10 a.m. on the following business day:

(A) Initial margin requirements and initial margin on deposit for each clearing member, by house origin and by each customer origin;

(B) Daily variation margin, separately listing the mark-to-market amount collected from or paid to each clearing member, by house origin and by each customer origin;

(C) All other daily cash flows relating to clearing and settlement including, but not limited to, option premiums and payments related to swaps such as coupon amounts, collected from or paid to each clearing member, by house origin and by each customer origin; and

(D) End-of-day positions for each clearing member, by house origin and by each customer origin.

(ii) The report shall contain the information required by paragraph (c)(1)(i) of this section for:

(A) All futures positions, and options positions, as applicable;

(B) All swaps positions; and

(C) All securities positions that are held in a customer account subject to section 4d of the Act or are subject to a cross-margining agreement.

(2) *Quarterly reporting.* A report of the derivatives clearing organization's financial resources as required by § 39.11(f) of this part; provided that, additional reports may be required by paragraph (c)(4)(i) of this section or § 39.11(f) of this part.

(3) *Annual reporting—(i) Annual report of chief compliance officer.* The annual report of the chief compliance officer required by § 39.10 of this part.

(ii) *Audited financial statements.* Audited year-end financial statements of the derivatives clearing organization or, if there are no financial statements available for the derivatives clearing organization itself, the consolidated